Submitted Electronically

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Re: Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance; RIN 3038-AF71; RIN 3235-AN79; Release Nos. 33-11424 and 34-105735; File No. S7-2026-21

Dear Mr. Kirkpatrick and Ms. Countryman:

I appreciate the opportunity to comment on the Joint Request for Comment issued by the Commodity Futures Trading Commission ("CFTC") and the Securities and Exchange Commission ("SEC," and together, the "Commissions") (the "Joint Request").[1]

I write to address three matters: the classification of perpetual contracts, including those referencing securities; the classification of event contracts under the security-based swap (“SBS") definition; and the design of a workable alternative-compliance framework.

My central submission is a matter of statutory sequence rather than policy preference. Title VII creates overlapping categories in some places, including mixed swaps, but it also makes particular threshold classifications mutually exclusive. Most importantly here, where an instrument is a futures contract, the Commodity Exchange Act ("CEA") removes it from the "swap" definition, and its removal from that definition forecloses SBS characterization as a matter of statutory text. Much of the uncertainty the Commissions describe dissolves once that sequence is stated. I accordingly urge the Commissions to resolve these questions first by fixing the definitional boundaries Congress actually created, and to use alternative compliance for the residual cases in which the statutes genuinely produce overlapping regulatory interests or obligations.

I. The Classification Sequence

Before turning to the numbered questions, I respectfully suggest that the Commissions state the following sequence expressly in any rule or interpretation they issue. It is dispositive of Questions 3, 6, 8, and 11, and it is not always articulated in market commentary.

First, determine whether the instrument is a contract of sale of a commodity for future delivery. If it is, CEA section 1a(47)(B)(i) excludes it from the definition of "swap."[2]

Second, note that exclusion from the "swap" definition forecloses SBS characterization. Exchange Act section 3(a)(68)(A) defines an SBS as an agreement, contract, or transaction "that is a swap," disregarding only the swap definition's own carve-out for SBS at CEA section 1a(47)(B)(x).[3] It does not disregard the futures exclusion at section 1a(47)(B)(i). A futures contract therefore never reaches the SBS Single Security Prong, the SBS NBSI Prong, or the SBS Event Contract Prong, irrespective of what it references.

Third, once an instrument has been determined to be a future, the remaining Title VII classification question is what it references. A future on a single security or NBSI is a security future (and thus a security futures product ("SFP") subject to the joint framework) while an ordinary future remains subject to the CFTC's exclusive jurisdiction. Tenor, settlement convention, and payout structure may matter to the antecedent question whether the instrument is a future, but once futures status is established they do not independently decide whether the future is an SFP.

I note that the CEA supplies no affirmative definition of a "contract of sale of a commodity for future delivery." Section 1a(27) defines "future delivery" only by exclusion, providing that the term "does not include any sale of any cash commodity for deferred shipment or delivery."[4] The content of the term derives from its settled commercial meaning and from judicial application of a functional, multi-factor test.[5] That definitional vacuum is significant for the questions below: it is what permits the Commissions to address perpetual tenor interpretively, and it is also why I urge the Commissions to codify their conclusions by rule rather than to leave them resting on policy statements alone.

II. Perpetual Contracts (Questions 11 and 5)

A. The CFTC's recent action supplies the analytical foundation for perpetual tenor, even though the order itself is asset-class specific.

On May 29, 2026, the CFTC approved the BTCPERP contract for listing on KalshiEX LLC under Regulation 40.3.[6] In the accompanying Policy Statement, the Commission described perpetual contracts as derivatives that have no fixed expiration date and that rely on a periodic funding-rate mechanism, rather than an expiration date, to maintain price parity with the underlying asset's spot price.[7]

I state the significance of that action precisely, because it is sometimes overstated. The CFTC has generally treated perpetual contracts as swaps. The May 2026 order approved a single product as a futures contract and the Commission grounded its analysis in the specific characteristics of the bitcoin spot market, its depth, distribution across venues, active participation, and continuous trading. The Policy Statement expressly excludes other asset classes from the order's scope and directs that perpetual contracts referencing other asset classes be submitted for Commission review under the voluntary approval process. It further observes that perpetual contracts referencing equity securities or narrow-based security indexes ("NBSIs") would benefit from review by both the CFTC and the SEC.[8]

What the order establishes is nonetheless significant and, I submit, generalizable. In concluding that a contract with no fixed expiration may be a futures contract, the Commission necessarily determined that futurity under the CEA turns on whether value is set at a future time rather than on whether the contract terminates on a date certain. That reasoning concerns tenor and convergence mechanics. Nothing in it depends on the identity of the reference asset.

The Commissions should confirm, by joint interpretation or rule, that the absence of a fixed expiration date does not by itself preclude futures characterization. That proposition about tenor can apply across reference assets even though whether a particular perpetual is in fact a future still depends on the instrument's terms and operation. Where a contract is a future, it is excluded from the "swap" definition and cannot be an SBS.

Three supporting points warrant emphasis:

Cash settlement is not disqualifying. Cash-settled futures on broad-based security indices, on volatility measures, and on interest rates have traded under the CFTC's exclusive jurisdiction for decades. Any framework that treated cash settlement as inconsistent with futures characterization would unsettle a large body of existing, well-functioning markets.

A perpetual contract settles more frequently than a dated future, not less. The funding-rate mechanism exchanges value between long and short positions at each funding interval. That is a continuous form of the mark-to-market settlement that already characterizes a cleared futures contract. The Policy Statement reflects this in requiring that a perpetual contract's susceptibility to manipulation be assessed by reference to the settlement price at each funding interval, rather than at a single expiration.[9] The absence of a terminal date is a maturity characteristic; it is not the absence of settlement.

The functional indicia of a futures contract are present. Standardized terms; execution on a designated contract market ("DCM"); clearing by a registered derivatives clearing organization ("DCO"); margining; extinguishment of positions by offset rather than delivery; and a price-discovery relationship to an identified primary market.

B. Question 11 comprises three questions with three answers

I respectfully suggest that the Commissions resolve Question 11 by segmenting the reference asset rather than treating "perpetual contracts referencing securities" as a single category.

Reference asset	Statutory result	Recommended action
Non-security commodities (digital commodities, energy, foreign exchange, rates)	CFTC-exclusive	Confirm. The CFTC has separately requested comment on extending perpetual contracts to physically delivered and storable energy commodities,[10] which indicates the framework is not confined to digital assets.
Broad-based security indices	CFTC-exclusive under CEA section 2(a)(1)(C)	Confirm that perpetual tenor does not alter exclusivity, and address the transition mechanics described in Part II.D.
Single securities and NBSIs	If a future: security future; security futures product	Confirm that a perpetual satisfying the futures definition and referencing a single security or NBSI is an SFP, and modernize the SFP framework.

C. A perpetual contract on a single security or NBSI that is a future is a security futures product, not a security-based swap

I do not ask the Commissions to find that a perpetual contract referencing a single security or NBSI falls within the CFTC's exclusive jurisdiction. That position is not supported by the statute, and advancing it would be contrary to the interests of market participants seeking a workable framework.

A "security future" is defined as a contract of sale for future delivery of a single security or NBSI, "including any interest therein or based on the value thereof."[11] That final clause is directed at instruments that settle by reference to value rather than by delivery. Cash settlement does not remove a contract from the definition, and arguments premised on the absence of a delivery obligation should be treated with caution.

They should be treated with caution for a further reason. Under the sequence set out in Part I, an argument that a single-name perpetual contract is *not* a future does not produce CFTC exclusivity; it produces the opposite. An instrument that is not a future is not excluded by section 1a(47)(B)(i), and an instrument based on the value of a single security that is not so excluded is a security-based swap. A successful argument against futures characterization would therefore deliver SBS treatment and the associated Exchange Act regulatory framework, rather than the CFTC-administered framework its proponents seek. Depending on the nature and extent of a

market participant's activity and its regulatory status, that framework may include SBS reporting, dealer-registration, and financial-responsibility requirements.

The correct conclusion is conditional but important: if a perpetual contract referencing a single security or NBSI satisfies the antecedent definition of a futures contract, it is a security futures product. Section 1a(47)(B)(i) then excludes it from the "swap" definition, so it cannot satisfy Exchange Act section 3(a)(68)(A)'s threshold requirement that a security-based swap be a swap. It is subject instead to the joint framework Congress designed for exactly this category. That framework already provides the answer to much of what the Joint Request asks: a DCM notice-registers with the SEC as a national securities exchange, and an SEC-registered exchange notice-registers with the CFTC as a contract market.[12] The classification should therefore turn on whether the particular perpetual is a contract of sale for future delivery, not on the word "perpetual" or the absence of a fixed expiration date.

Recommendation: The Commissions should (i) confirm that a perpetual contract referencing a single security or NBSI that satisfies the futures definition is a security futures product; and (ii) undertake a coordinated review to make that framework operable for this product class, addressing margin calibrated to risk-based futures standards, listing standards workable for perpetual tenor, reference-price and price-alignment methodology, clearing and settlement arrangements, coordinated surveillance, and trading halts.

I note that any broader reallocation of jurisdiction over single-name equity derivatives would require Congressional action. I do not ask the Commissions to exceed their authority, and I identify the limit here so that the recommendations I do make are understood as within it.

D. A listing-based safe harbor is administrable; a listing-based default rule is not

Certain commenters have proposed that classification turn on whether a product is listed as a security futures product, with all comparable products offered outside that framework treated as SBS.

I support the affirmative half of that proposal. Listing under the security-futures framework is objective, verifiable at the time of execution, and administrable without a facts-and-circumstances inquiry. The Commissions should adopt it as a safe harbor: a perpetual contract referencing a single security or NBSI that is listed and traded in accordance with the applicable SFP requirements is a security futures product.

I do not support the default half. Whether an instrument is a security-based swap is determined by the statutory definitions, not by the venue on which it is offered or by whether any person has listed it. An instrument that satisfies the definition of a security future does not become an SBS because it was not listed as an SFP; it becomes a security future offered outside the framework that governs it. A default rule of the kind proposed would convert a classification provision into a permissibility determination, and it would do so without statutory support. Where market participants require a lawful pathway for bilateral or off-exchange exposure to a single security,

the SBS framework is available where the instrument satisfies the statutory definition, but by operation of the definitions not by operation of a presumption.

E. Perpetual tenor requires conforming transition mechanics (Question 5)

Question 5 asks whether the Commissions should revise or clarify the existing tolerance and grace-period rules for products referencing a securities index that transitions between broad-based and narrow-based.[13] I believe this question has a specific answer in the perpetual context that has not been addressed, and I urge the Commissions to reach it.

The existing rules are constructed around contracts with a defined term. They measure index composition over a period anchored to the contract's life and provide a grace period within which reclassification takes effect. A perpetual contract has no term to which those mechanics can attach. An index perpetual whose reference index migrates from broad-based to narrow-based therefore presents two unresolved problems: there is no principled measurement window, and there is no expiration at which reclassification can take effect in an orderly manner. Reclassification would occur while open interest remains outstanding, converting a CFTC-exclusive product into a jointly regulated security futures product in place.

Recommendation: The Commissions should adopt conforming transition mechanics for perpetual contracts comprising:

1. A rolling measurement convention (for example, a trailing six full calendar months) substituting for the term-anchored window;
2. A grace period running from the close of the measurement period, during which the contract retains its prior classification;
3. An orderly-transition provision permitting the DCM to close out, transfer, or transition open interest without the contract being deemed to have been listed in violation of applicable requirements during the transition; and
4. Reliance protection: the classification determined at listing or certification governs unless and until the transition mechanics are triggered and is not subject to retroactive recharacterization absent a material change in contract terms.

F. Market effects and safeguards (Question 11)

The Commissions ask what effects the introduction of perpetual contracts referencing equity securities could have on liquidity formation, price discovery, and hedging, particularly with regard to the derivatives and underlying cash equity markets.

I address the objection that has been raised to arguments of this kind. It has been observed that a regulatory framework which weighs the risk of activity migrating to less-regulated venues as a factor against restriction will, in practice, never restrict anything: popular products will be permitted to prevent migration, and unpopular products require no restriction. I think that objection has force against any argument that rests on participant demand. It has no force against an argument that identifies specific supervisory outputs that onshore listing produces and offshore trading does not.

Those outputs are concrete and enumerable:

- A reference price derived from an identified primary market and subject to DCM surveillance obligations, rather than an unsupervised composite;
- Position and large-trader data available to the Commissions, and available for sharing with the primary listing market;
- DCO clearing, margin, and default management in place of bilateral or platform-internal credit exposure;
- Enforceable conduct rules, recordkeeping, and audit trail; and
- The reach of CEA section 6(c)(1) and CFTC Rule 180.1 over fraud and manipulation.

The relevant claim is not that participants prefer regulated venues. It is that the Commissions can directly supervise products listed on regulated U.S. markets in ways they cannot directly supervise products traded offshore.

Safeguards: I recognize that perpetual contracts referencing equity securities raise distinct concerns, including funding-rate manipulation, liquidation dynamics under leverage, and the consequences of continuous trading in a derivative on a security whose primary market is not continuously open. I recommend that any framework include:

1. **Trading halts coordinated with the primary listing market.** A perpetual contract referencing a security should halt when the primary listing market halts that security, with coordinated reopening procedures. I regard this as the most important of these safeguards, and I support it notwithstanding that it constrains the product's continuous-trading feature.
2. **Funding-rate caps or collars** per interval, disclosed in the contract terms.
3. **Position limits and accountability levels** calibrated to the referenced security's public float and average daily volume.
4. **Margin sufficient to cover an interval's adverse move** at a stated confidence level, with pre-trade risk controls at the intermediary.
5. **Cross-market surveillance sharing** with the primary listing market, supported by the Commissions' March 11, 2026 Memorandum of Understanding.[14]

I encourage the Commissions to seek quantitative submissions on offshore perpetual volume and open interest, funding-rate behavior across market conditions, and roll costs in dated equity index futures, and I will supplement this letter with data on request.

III. Event Contracts (Questions 1, 7, and 8)

A. Swap classification, and the objection to it

Event contracts listed on DCMs are properly characterized as swaps under CEA section 1a(47)(A)(ii), which reaches an agreement providing for a payment "dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence."

I note that this characterization has been questioned on the basis of the interpretation adopted in the Product Definitions Adopting Release, under which certain transactions entered into by consumers, as principals or their agents, "primarily for personal, family or household purposes" would not be considered swaps or security-based swaps.[15] The argument runs that event contracts traded for personal purposes fall within that interpretation.

I respectfully submit that the interpretation does not bear that reading, for three reasons.

The interpretation addressed bilateral consumer commercial agreements. Its subject was the class of ordinary consumer and commercial arrangements (fixed-price service contracts, extended warranties, contingent obligations in consumer transactions) that satisfy the literal terms of the swap definition without implicating its purposes. It was not addressed to standardized instruments executed on a designated contract market and cleared by a registered clearing organization.

The proposed reading proves too much. If a transaction ceased to be a swap because the natural person entering it did so for personal rather than commercial purposes, retail participation in any CFTC-regulated product would fall outside the definition. That is plainly not what the Commissions adopted.

The regulatory architecture assumes the opposite. The exchange-traded framework (DCM listing standards, clearing, reporting, and surveillance) applies to these instruments precisely because they are within the CEA. An interpretation removing them from the swap definition would remove them from that architecture, not relocate them within it.

I further note that this argument, if accepted, would place event contracts outside Title VII entirely rather than reallocating them between the Commissions. I identify it here because I believe the Commissions should address it directly rather than leave it unresolved.

A related observation. The reporting treatment of an exchange-traded event contract should not be confused with its product classification. A contract may satisfy the statutory swap definition while warranting a reporting architecture different from the one designed for bilateral swap markets, particularly where the product is standardized, exchange-traded, fully collateralized, and already reported directly by a DCM. Relief from parts 43 and 45 therefore does not create a classification tension; it reflects a separate judgment about what information the Commission needs and how that information should be delivered. I support a durable rule tailored to that market structure rather than treating reporting architecture as evidence of what the product is.

B. Proposed criteria (Question 1)

The Joint Request asks for principled, objective criteria. For ordinary event contracts, the analysis should focus on the settlement condition and the economic rights or exposure the instrument creates, rather than on collateralization, venue, or the label attached to the product. An event contract falls naturally within CEA section 1a(47)(A)(ii), and ordinarily outside the SBS definition and the securities-option exclusion, where it:

1. Pays a fixed, pre-stated amount upon the occurrence or non-occurrence of an objectively verifiable event, determined by reference to an identified public source specified in the contract terms;
2. If it relates to a securities issuer, settles on an event that does not itself directly operate on the issuer's financial statements, actual financial condition, or financial obligations;
3. Confers no right to acquire or dispose of a single security or NBSI and does not create or objectively replicate proportional exposure to the price, return, value, or yield of that security or index; and
4. Is not otherwise a genuine securities option, privilege, or security future under the statutory definitions. A fixed terminal binary whose yes-or-no condition is stated in terms of a security price presents the separate Question 8 issue discussed below and should not be assigned to the securities regime merely because price appears in the settlement condition.

Full collateralization remains highly relevant to the regulatory treatment of these products, but it should not be made a statutory classification criterion that Congress did not write. A fully collateralized binary contract transfers no counterparty credit risk beyond the amount posted and does not create the open-ended bilateral exposure characteristic of many traditional swaps. Those features matter to margin, capital, clearing, reporting, and the appropriate degree of regulatory tailoring even though the antecedent question whether the instrument is a swap or SBS should be answered from the statutory definitions themselves.

The fixed terminal security-price binary is the hardest application, not a category that should simply be conceded. A contract paying one dollar if a stock closes above a threshold creates exposure to whether the threshold is crossed, but it does not transmit the stock's return and pays the same amount whether the stock closes one cent or one hundred dollars above the threshold. The price reference therefore makes the statutory analysis harder without making the economic exposure equivalent to stock, a total return swap, or a conventional option. The Commissions should preserve a CFTC-side path for such fixed terminal binaries where the text permits and, if they conclude that some structures fall on the securities side, should use available exemptive authority and alternative compliance to avoid forcing event-like products into the full securities regulatory regime merely because the yes-or-no condition is stated in price terms.

C. Question 7: the SBS Event Contract Prong

Question 7 asks whether additional clarity is necessary regarding when an event "directly affects" the financial statements, financial condition, or financial obligations of an issuer. I believe it is, and I urge the Commissions to read the prong narrowly for the following reasons.

The prong tests a relationship to which the contract is not a party. The operative language provides that the swap must be based on an event relating to a single issuer, "provided that *such event* directly affects the financial statements, financial condition, or financial obligations of the issuer."[16] The grammatical subject of "directly affects" is the event. The statute does not ask whether the *contract* affects the issuer, and in the ordinary case it does not: the issuer is not a party, receives no proceeds, issues nothing, and incurs no obligation. The event operates as a common cause (it affects the issuer's financials and, in parallel, determines the contract's settlement) but the causal relationship the statute measures runs entirely outside the transaction.

The consequence deserves the Commissions' attention. Applied expansively, the prong allocates regulatory authority over an instrument on the basis of a fact about a third party's accounting, without regard to whether the instrument creates any nexus to that issuer, to its securities, or to its capital formation. Two contracts identical in economics, risk transfer, counterparties, and customer base would be assigned to different regulatory regimes by a circumstance external to both.

The text signals a narrow construction. Congress drafted the swap and SBS event provisions differently, and the difference is instructive. The swap definition reaches an event "**associated with** a potential financial, economic, or commercial consequence" a deliberately loose linkage to a merely potential consequence. The SBS Event Contract Prong requires that the event relate to a **single** issuer and that it **directly affect** three enumerated financial attributes. The SBS provision is narrower on two independent axes. The "provided that" clause is, grammatically and functionally, a proviso: it limits what precedes it. It should be applied as a filter, not as a net.

The Commissions' original implementation of Title VII points in the same direction. The Product Definitions Adopting Release explained that the issuer-event provision applies generally to event-triggered swap contracts and illustrated the prong with bankruptcy and defaults on an issuer's debt securities or non-security loans.[17] Those are paradigmatic examples because the event itself operates directly on the issuer's financial condition or obligations. That history does not make credit products the only instruments capable of satisfying the prong, but it does show why bankruptcy and default are materially different from product launches, regulatory approvals, reported operating metrics, and other events whose financial consequences arrive through the business or through disclosure.

A credit default swap illustrates the directness Congress had in view, but CDS economics are not an additional statutory element. A bare binary that pays if an issuer defaults can fall within the SBS event prong because default itself directly affects the issuer's financial obligations even if the contract does not reproduce every feature of a CDS. The workable distinction is therefore between events like default that themselves operate on the specified financial attributes and operating, regulatory, or disclosure events whose financial consequences arise only through later business results or market expectations.

Recommendation: The Commissions should clarify that an issuer-related event satisfies the "directly affects" proviso only where the specified event itself operates directly on the issuer's financial statements, actual financial condition, or financial obligations, rather than merely revealing information about those attributes or producing downstream economic consequences. In applying that rule, the Commissions should distinguish among:

1. **Events such as default, failure to pay, bankruptcy, restructuring, or a merger closing that itself changes assets, liabilities, cash, goodwill, capital structure, or financial obligations**;
2. **Events such as a product launch, regulatory approval, personnel change, operating milestone, or other business development whose financial consequences occur through the issuer's later operations**; and reported financial metrics, which disclose the content of financial statements rather than themselves changing the issuer's assets, liabilities, obligations, or financial condition.

This construction gives the word "directly" work to do without adding an extra-textual requirement that the contract itself transfer exposure to the issuer's capital structure. Materiality, expected stock-price impact, disclosure status, correlation, and the fact that a trader could have expressed a related view in the stock may all matter for other regulatory purposes, but none answers whether the event itself directly operates on the financial attributes Congress specified.

I would add a third clarification: the prong applies only to events relating to a single issuer or to the issuers of securities in an NBSI. Contracts referencing macroeconomic conditions, policy outcomes, elections, weather, or aggregate measures fall outside it, even where particular issuers are materially affected by the outcome. Contracts referencing broad-based security indices remain subject to CEA section 2(a)(1)(C).

Application: A contract settling on quarterly unit deliveries ordinarily remains outside the prong because deliveries may translate into revenue but are not themselves revenue, an asset, a liability, or an obligation. A contract on whether an issuer reports EPS above a stated number or revenue above a stated amount should likewise remain outside: the report reveals a financial result that already exists and does not itself change the issuer's financial statements, financial condition, or obligations. A merger closing can be different where the closing itself changes cash, assets, liabilities, goodwill, or capital structure, and default is the clearest case because it directly changes financial obligations. Product announcements, regulatory or clinical outcomes, personnel changes, and sporting results involving an issuer's business remain outside for the same reason as other independently defined operating events.

D. Question 8: the securities-option exclusion

The exclusion at CEA section 1a(47)(B)(iii) for any "put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities... that is subject to" the Securities Act and the Exchange Act removes an instrument from **both** the swap and the security-based swap definitions. Its application is therefore consequential in a way that differs from the SBS

prongs: it does not reallocate an instrument between the Commissions, it removes it from Title VII.

I urge a construction consistent with the statutory family of terms Congress chose. A put, call, straddle, option, or privilege on a security ordinarily confers an actual or synthetic economic right with respect to the security, and cash settlement does not by itself change that character. But a fixed binary payout does not become a conventional securities option merely because the yes-or-no settlement condition observes a security price. The Commissions' own framing in Question 8 recognizes that a line remains to be drawn when it asks what distinguishes event contracts from "binary options that already trade as standardized options on securities on national securities exchanges."

I propose the following line:

- A fixed terminal binary settling on whether a stated price or value level of a single security or NBSI is attained presents the hardest case. The price reference is relevant, but the product pays the same fixed amount regardless of how far the security moves beyond the threshold and therefore does not transmit the security's proportional return. The Commissions should not treat the price reference as dispositive and should preserve a CFTC-side path where the statutory text permits; if they conclude that a particular structure falls within the securities-option exclusion, targeted exemptive relief and alternative compliance should be considered.
- A contract settling on whether a stated non-price event occurs is not an option "on" a security. It confers no right respecting the security, and its settlement is not measured by the security's value. The identification of an issuer in the contract terms does not convert it into an option on that issuer's securities.
- A futures contract on a broad-based security index remains within CFTC exclusive jurisdiction under CEA section 2(a)(1)(C), while a genuine option or privilege on a securities index must be analyzed under the securities-option exclusion. An independently defined event involving one or more constituents does not become an option on the index merely because it may affect constituent values or the index level.

The exclusion should preserve genuine securities options, including appropriate cash-settled and synthetic forms, without turning every contingent contract that references a securities issuer or a security price into an SEC product. Independently defined non-price events present the easy case; fixed terminal security-price binaries present the hard one. In both, the statutory analysis should turn on the economic right and exposure the contract creates rather than on terminology or the mere appearance of a security price in a settlement condition.

IV. Alternative Compliance (Questions 12 through 15)

Scope: I support a workable alternative-compliance framework, and I note that it ordinarily addresses a different problem from the classification questions in Parts II and III of this letter. Where the Commissions can fix a definitional boundary, they should do so rather than use parallel obligations as a substitute for classification. Where both regimes genuinely apply, alternative compliance is essential; and where a hard boundary product such as a fixed terminal security-price binary cannot be kept within a CFTC-side framework through interpretation alone, appropriately tailored exemptive relief and alternative compliance may be necessary to prevent the classification question from producing duplicative regulation untethered to the product's economic function.

"Substantially similar" (Question 12): Substantial similarity should be assessed by reference to regulatory objectives and supervisory outcomes rather than textual or procedural identity. The relevant objectives are customer asset protection and segregation; financial resources and risk management; market-integrity surveillance; recordkeeping and data availability; and enforcement reach. Where both frameworks achieve the same objective, compliance with one should satisfy the other, and residual gaps should be addressed by targeted supplemental conditions rather than by duplicative compliance with a second framework in its entirety.

Vehicle (Question 13): The Joint Request notes that Title VII limits each Commission's exemptive authority. Where the agencies can solve overlap through joint further-definition authority, notice registration, deemed filings, or other rule-based mechanisms, those durable tools should generally be preferred. That does not require the Commissions to foreclose targeted exemptive relief where the statutes permit it and a specific product would otherwise be forced into duplicative or poorly matched requirements. The principal vehicles should include:

- The **joint further-definition authority**, which is definitional rather than exemptive and is accordingly not subject to those limits; and
- **Notice registration**, for which Congress has already supplied a template. Exchange Act section 6(g) and CEA section 7b-1 establish reciprocal notice registration for markets listing security futures products, and Exchange Act section 15(b)(11) does so for intermediaries. That architecture is the existing statutory proof that a dual-jurisdiction product can operate under a single primary rulebook. It is also the framework I ask the Commissions to modernize in Part II.C, and the two recommendations reinforce one another.

Rule 18a-10 (Question 12): I support amendment of the alternative compliance mechanism in SEC Rule 18a-10. The aggregate gross notional condition, which requires an eligible firm's outstanding SBS positions not to exceed the lesser of the fixed-dollar cap or 10 percent of combined SBS and swap positions, effectively requires approximately nine dollars of swaps for each dollar of SBS. SEC staff analysis indicates that only two security-based swap dealers rely on the rule.[18] A pathway with that level of utilization is not functioning as an alternative compliance mechanism. Recalibrating the percentage condition while retaining the fixed-dollar cap and all other conditions would broaden practical availability without converting the rule into a general exemption.

Reporting: Where common transaction data, technical standards, and repository infrastructure satisfy both agencies' objectives, the Commissions should establish a durable rule-based framework rather than extend temporary relief. Where harmonization is achieved by adopting the more complete of two standards, I encourage the Commissions to describe it as such. Adopting a superior standard and reducing aggregate compliance burden are distinct objectives, and conflating them obscures the analysis.

Surveillance and material non-public information (Questions 14 and 15): The existing framework is more capable than is sometimes assumed. CEA section 6(c)(1) and CFTC Rule 180.1 reach fraud and manipulation in connection with swaps and contracts of sale of commodities, while DCM self-regulatory obligations supply surveillance, audit-trail, and enforcement tools for trading on the market. Those provisions should not be casually restated as a general possession-based federal insider-trading prohibition for every event contract. If the Commissions identify a gap concerning trading on material non-public information, the cleaner solution is to address that conduct directly through DCM rules and any other authority Congress has provided, while using the March 2026 MOU for cross-market information sharing and coordinated surveillance.

I nonetheless recommend that the Commissions go further, and I support the following:

1. **An express DCM rule prohibiting trading in specified issuer-referencing event contracts while in possession of material non-public information concerning the referenced issuer**, enforceable through the DCM's rulebook and the CFTC's applicable statutory authority. The rule should be written directly rather than resting on an assumption that section 6(c)(1) already creates a general possession-based insider-trading prohibition across all event contracts.
2. **Reciprocal access to position, large-trader, order, and transaction data** for products referencing securities, under the Commissions' Memorandum of Understanding.
3. **A shared cross-market surveillance protocol** covering the referenced security, listed options, security futures, and related derivatives, with particular attention to corporate-event windows, pricing windows, and trading halts.
4. **Coordinated referral and escalation procedures**, with each Commission retaining independent examination and enforcement authority.

V. Conclusion

For the reasons set out above, I respectfully recommend that the Commissions:

1. **State the classification sequence** by which futures characterization forecloses swap and security-based swap characterization, and codify it by joint rule rather than by interpretation alone;

2. **Confirm that the absence of a fixed expiration date does not preclude futures characterization**, and that this conclusion does not depend on the reference asset;
3. **Confirm that perpetual contracts referencing a single security or NBSI that satisfy the futures definition are security futures products**, and undertake a coordinated review to make the security-futures framework operable for that product class;
4. **Adopt a listing-based safe harbor** for security futures product characterization, without adopting a corresponding default rule assigning unlisted products to the security-based swap framework;
5. **Adopt conforming index-transition mechanics for perpetual contracts**, comprising a rolling measurement convention, a grace period, orderly-transition provisions for open interest, and reliance protection;
6. **Adopt objective criteria for event contracts based on the settlement condition and economic rights or exposure the instrument creates**, treating full collateralization as relevant to regulatory tailoring rather than statutory classification and preserving a CFTC-side path for fixed terminal security-price binaries where the statutes permit;
7. **Construe the SBS Event Contract Prong narrowly**, requiring that the specified event itself operate directly on the issuer's financial statements, actual financial condition, or financial obligations rather than merely revealing financial results or producing downstream economic consequences;
8. **Construe the securities-option exclusion narrowly enough to preserve genuine securities options** without treating a fixed terminal security-price binary as an SEC product solely because the yes-or-no settlement condition observes a security price;
9. **Implement alternative compliance principally through joint further-definition authority, notice registration, deemed filings, and other durable rule-based mechanisms**, while preserving targeted exemptive relief where legally available and necessary, and recalibrate SEC Rule 18a-10 to restore a usable pathway; and
10. **Adopt the surveillance and market-integrity commitments described in Part IV**, including an express DCM rule addressing trading in specified issuer-referencing event contracts while in possession of material non-public information, without assuming that existing section 6(c)(1) authority by itself supplies a general possession-based insider-trading rule.

I appreciate the Commissions' attention to these questions and would welcome the opportunity to discuss this submission or to provide supplemental data.

Respectfully submitted,

Michael Stackrow

Footnotes

1. Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Release Nos. 33-11424, 34-105735, File No. S7-2026-21, 91 Fed. Reg. 37873 (June 24, 2026).
2. 7 U.S.C. § 1a(47)(B)(i).
3. 15 U.S.C. § 78c(a)(68).
4. 7 U.S.C. § 1a(27).
5. See, e.g., CFTC v. Co Petro Mktg. Grp., Inc., 680 F.2d 573 (9th Cir. 1982); cf. CFTC v. Zelener, 373 F.3d 861 (7th Cir. 2004).
6. CFTC, Order Approving KalshiEX LLC BTCPERP Futures Contract (May 29, 2026).
7. Policy Statement Concerning the Listing of Perpetual Contracts, 91 Fed. Reg. 33160 (June 3, 2026).
8. Id. at 33161 n.5.
9. Policy Statement, supra note 7.
10. Request for Comment on the Extension of Standard Futures Contracts to 24/7 Trading and on Perpetual Contracts Referencing Physically Delivered or Storable Energy Commodities, 91 Fed. Reg. 38334 (June 25, 2026).
11. 7 U.S.C. § 1a(31); see also 15 U.S.C. § 78c(a)(55)(A). "Security futures product" is defined at 7 U.S.C. § 1a(45).
12. 15 U.S.C. § 78f(g); 7 U.S.C. § 7b-1; see also 15 U.S.C. § 78o(b)(11).
13. See 17 C.F.R. §§ 240.3a55-2, 240.3a55-3; 17 C.F.R. pt. 41. *Confirmed: 91 Fed. Reg. at 37876 n.20.*
14. SEC & CFTC, Memorandum of Understanding regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026).
15. Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48318 (Aug. 12, 2012).
16. 15 U.S.C. § 78c(a)(68)(A)(ii)(III) (emphasis added).
17. Joint Request, supra note 1, at 37876 (Question 7); see Product Definitions Adopting Release, supra note 15, at 48267. *Both confirmed: 91 Fed. Reg. at 37876 and n.21.*
18. 17 C.F.R. § 240.18a-10; see id. §§ 240.18a-10(a)(5), (f)(1); Randis Brown et al., SEC Div. of Econ. & Risk Analysis, The Financial Conditions of Security-Based Swap Dealers 3 n.21 (Mar. 2026).